

Enforcement Policy Statement

A. Introduction

The Health and Safety Executive's (HSE) aims are to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.

The HSE's functions include:

- Promoting and improving health & safety standards in employment
- Providing information and advice
- Enforcing health and safety law in relation to work activities
- Conducting research
- Proposing new or updated laws and standards

This enforcement policy statement sets out the general principles and approach which the HSE will follow. Health and Safety Inspectors who take enforcement decisions are required to follow this enforcement policy statement.

The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare.

In allocating resources, the HSE will have regard to the principles set out in this policy statement, and the need to maintain an appropriate balance between enforcement and other activities, including inspection.

B. The purpose and method of enforcement

The purpose of the HSE is to ensure that duty holders manage and control risks effectively, thus preventing harm.

The term 'enforcement' has a wide meaning and applies to all dealings between the Health & Safety Executive (HSE) and those on whom the law places duties (employers, the self-employed, employees and others).

The purpose of enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;

- ensure that duty holders who breach health and safety requirements (including directors or managers, who fail in their responsibilities) may be held to account, which may include recommending prosecution, in the circumstances set out later in this policy.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

Inspectors have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders information and advice, both face to face and in writing. This may include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement and prohibition notices, and may report a matter to the Law Officers of the Crown for their consideration as to whether a criminal prosecution is appropriate. Information on improvement and prohibition notices is made publicly available.

Giving information and advice, issuing improvement or prohibition notices, are the main means by which inspectors achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm.

A prohibition notice stops work, in order to prevent serious personal injury.

Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed.

Improvement and prohibition notices, and written advice, may be used in court proceedings.

Prosecution is an important way to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, inspectors will prepare and provide a report to the Law Officers of the Crown in addition to issuing an improvement or prohibition notice.

Investigating the circumstances encountered during inspections or following incidents or complaints is essential before considering enforcement action. In deciding what resources to devote to these investigations, an inspector will have regard to the principles of enforcement set out in this statement and the objectives published in strategic plans. In particular, in allocating resources, an inspector will strike a balance between investigations and proactive interventions.

Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety legislation is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out

in Approved Codes of Practice (ACOPs). These give practical advice on compliance and have a special legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, the ACOP may be used as an indication of the standard that is expected. Advice is also contained in other guidance material that describes good practice. Following this guidance is not compulsory, but doing so is normally enough to comply with the law. Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will need to take relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters in this statement.

Inspectors will use discretion in deciding when to investigate or what enforcement action may be appropriate. This policy sets down the decision-making process which inspectors will follow when deciding on enforcement action and is publicly available.

C. The principles of enforcement

The HSE believes in firm but fair enforcement of health and safety law. This should be informed by the principles of

- I. **proportionality** in applying the law and securing compliance;
- II. **consistency** of approach;
- III. **targeting** of enforcement action;
- IV. **transparency** about how the HSE operates and what those regulated may expect;
and
- V. **accountability** for the HSE's actions.

These principles should apply both to enforcement in particular cases and to the HSE's management of enforcement activities as a whole.

I. Proportionality

Proportionality means relating enforcement action to the risks.

Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by inspectors to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to health and safety and/or the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

In practice, applying the principle of proportionality means that the HSE will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Some health and safety duties are specific and absolute. Others require duty holders to take action 'so far as is reasonably practicable' to control risks. Inspectors will apply the principle of proportionality in relation to both kinds of duty.

Deciding what is 'reasonably practicable' involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, inspectors considering protective measures taken by duty holders must on the one hand take account of the degree of risk, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors so that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk. However, even if the risk is insignificant, costs may still need to be incurred because some irreducible risks may be so serious they cannot be permitted irrespective of the consequences.

Inspectors will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

II. Targeting

Targeting means making sure that resources are directed primarily towards those duty holders whose activities give rise to the most serious risks or where the hazards are least well controlled; after all, whether they are employers, manufacturers, suppliers, or others it is the duty holder who is responsible for the risk and best placed to control it.

The HSE will decide which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of the risks posed by a duty holder's operations. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that the HSE can give public assurance that such risks are properly controlled.

Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, inspectors may take action against more than one when it is appropriate to do so in accordance with this policy.

When inspectors issue improvement or prohibition notices or forward a report to the Law Officers of the Crown, the inspector will ensure that, where ever possible, a senior manager of the duty holder concerned is notified.

III. Consistency

Duty holders managing similar risks have a right to expect a consistent approach from the HSE in the advice tendered; in the appropriate use of enforcement notices and in the response to incidents.

However, consistency of approach does not mean uniformity of sanction. Instead it means achieving similar ends in similar circumstances even if the method of getting there is different.

It is recognised that, in practice, consistency is not always easy to perceive. This is because inspectors are often faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by inspectors. The HSE therefore has arrangements in place to promote consistency in the exercise of discretion.

IV. Transparency

Transparency means helping duty holders to understand what the law requires of them and what they should expect from the HSE. This means the HSE will make clear to duty holders not only what they have to do but also, where relevant, what is not required of them and will distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.

Transparency also involves the HSE having arrangements for keeping employees, their representatives, and victims or their families informed as investigations

develop. These arrangements must have regard to legal constraints and requirements.

This statement sets out the general policy framework within which the Health & Safety Executive should operate. Duty holders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them; for example:

- when inspectors offer duty holders information, or advice, face to face or in writing, they will explain what to do to comply with the law, and why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;
- in the case of improvement notices served under section 18 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987, as amended (“the Ordinance”) the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and that in the inspector’s opinion a breach of the law has been committed; it also states that the duty holder has a right to appeal to the Ordinary Court under section 21 of the Ordinance.
- in the case of a prohibition notice served under section 19 of the Ordinance, the notice will explain why the prohibition is necessary and the duty holder’s right to appeal to the Ordinary Court under section 21 of the Ordinance.

V. *Accountability*

Regulators are accountable to the public for their actions. This means that the HSE has policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

Complaints should be made in the first instance to The Chief Health and Safety Officer, Tel: 220010.

D. Investigation

The HSE uses discretion in deciding whether incidents, cases of ill health, or complaints should be investigated

Investigations are undertaken in order to determine:

- causes;
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- lessons to be learnt and to influence the law and guidance;
- what response is appropriate to a breach of the law.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. The HSE recognises that it is neither possible nor necessary for the purposes of the law to investigate all issues of non-compliance which are uncovered in the course of preventive inspection or in the investigation of reported events.

The HSE will carry out a site investigation of a work-related death in conjunction with the States of Guernsey Police.

In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, the HSE will take account of the following factors:

- the severity and scale of potential or actual harm;
- the seriousness of any potential breach of the law;
- knowledge of the duty holder's past health and safety performance;
- the enforcement priorities;
- the practicality of achieving results;
- the wider relevance of the event, including serious public concern.

E. Prosecution

The decision on whether to bring a prosecution rests with the Law Officers of the Crown.

Before prosecutions can be instituted, the Law Officers will need to be satisfied there is sufficient evidence to provide a realistic prospect of conviction and, if so, that a prosecution is required in the public interest. Whilst the decision to prosecute is one for the Law Officers alone, the views of the HSE will be taken into account.

An apparent infraction of the law is likely to be referred to the Law Officers in the following circumstances:

- where it is significant
- where it is seen to have been conscious and deliberate
- where, in the opinion of the HSE, the public interest makes it more important that there should be a prosecution
- where it is one of a series of small breaches which suggests a persistent lack of conformity with the law
- where there is a perceived trend of similar breaches by others which might call for prosecution as a warning or example

In the following circumstances it may be appropriate not to refer an apparent infraction to the Crown Officers:

- where it is minor
- where the offence is committed as a result of a genuine mistake or misunderstanding*
- where, in the opinion of the HSE, it would not be in the public interest for the offender to be prosecuted.* For example, if by relying on information volunteered in the course of a genuine enquiry to form the basis of the prosecution, this would deter others from seeking assistance from the HSE to comply with the law*
- where it is a single incident*
- where there has been a long delay between the HSE having knowledge of an infraction and investigating it*

* These factors must be balanced against the seriousness of the offence and generally the Law Officers will be consulted where there is any doubt.

The above examples are illustrative only and should not be considered as either exhaustive or conclusive as each case will be considered on the individual merits.

F. Prosecution of individuals

Subject to the above, the HSE will recommend prosecution of individuals as well as corporate entities if they consider that a prosecution of both is warranted. In particular, inspectors should consider the management chain and the role played by individual directors and managers, and should take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy.

G. Death at work

The police are responsible for deciding whether to pursue a homicide investigation and whether to refer a case to the Law Officers to consider possible manslaughter charges. The HSE are responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the HSE find evidence suggesting homicide, they will pass it on to the police. If the police or the Law Officers decide not to pursue a manslaughter case, the HSE will carry out enforcement of the law in accordance with this policy.

H. States Committees

States Committees must comply with health and safety requirements and they are also subject to enforcement action, including prosecution. In deciding when to investigate or what form of enforcement action to take, HSE will follow the same approach as they do for others, in accordance with this enforcement policy.

I. Penalties for health and safety offences

The Health and Safety at Work (General) (Guernsey) Ordinance, 1987, sets out the offences and maximum penalties under health and safety legislation; at present the maximum fine in the Magistrates Court is £20,000 with unlimited fines or imprisonment for a term not exceeding 2 years being available in the Royal Court.

Further information is available from:

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